

ARTICLE 21: FURLOUGH

POLICY

- 21.1 AFSA/FAS recognizes that circumstances beyond the control of the Employer may necessitate having to furlough employees. AFSA/FAS also recognizes that the decision to furlough employees, which employees are furloughed, and the duration of any furlough will be made by the Employer subject to numbers, and classes of bargaining unit members to be furloughed in nonemergency situations.
- 21.2 The Employer recognizes that AFSA/FAS, in agreeing to the following, does not waive any individual employee's rights under Statute or regulation.
- 21.3 Furloughs, whether they are emergency or nonemergency furloughs, will be implemented in accordance with applicable Statutes, regulations, and negotiated agreements.
- 21.4 Nonemergency furloughs will be implemented only if their necessity cannot be reasonably abated through other means, such as hiring freezes, reduction in travel or training that is not critical to the mission of FAS, reduction of contracts with consultants and contractors, etc.

DEFINITIONS

- 21.5 Days: Calendar days unless stated otherwise.
- 21.6 Emergency Furlough: A furlough because of lack of appropriations or lack of work due to unpredictable events such as natural disasters, fires, etc.
- 21.7 Furlough: The placement of an employee in temporary non-duty and non-pay status for not more than 30 consecutive days or 22 nonconsecutive work days during the twelve (12) month period beginning the day after the effective date of the furlough. For furloughs of more than 30 consecutive days or more than 22 nonconsecutive work days see Article 20 (RIF) of this Agreement.
- 21.8 Nonemergency Furlough: A furlough because of budgetary short-fall or lack of work other than noted in the definition of emergency furlough.

FURLOUGH NOTICES

- 21.9 In emergency furlough situations, employees will be given as much advance notice as possible.

- 21.10 In nonemergency furlough situations, employees will be given as much advance notice as possible but not less than the minimum required by Statute or regulation. In the event that no minimum notice period is defined by Statute or regulation, employees will be provided with a minimum of 14 days advance notice of furlough.
- 21.11 Employees will be provided written notice of furlough. The furlough notice will contain all of the information required by Statute or regulation, and will include the following:
- a. A general statement of the reason for the furlough;
 - b. If the furlough is a nonemergency one, the notice will state the maximum number of furlough days;
 - c. If the furlough is an emergency one, the Parties recognize that the number of furlough days may not be known in advance and that the Employer may not be able to notify bargaining unit members. If the number of furlough days becomes known after the onset of the furlough, the Employer will make reasonable efforts to communicate this information to the furloughed employees;
 - d. An explanation of why the employee is being furloughed if not every employee is being furloughed; and,
 - e. The employee's appeal or grievance rights and the time limits for filing.
- 21.12 In nonemergency furlough situations, and to the extent possible in emergency furlough situations, the Employer will submit a draft furlough notice to AFSA/FAS for comment prior to distributing it to employees.
- 21.13 The Employer will provide AFSA/FAS with a list of employees which identifies those who will be furloughed.
- a. In an emergency furlough situation, the listing of employees will be provided to AFSA/FAS on the day furlough notices are given to employees.
 - b. In a nonemergency furlough situation, the listing of employees will be provided to AFSA/FAS as much in advance of the anticipated furlough date as possible.

PROCEDURES

- 21.14 The Agency will identify the number of employees to be furloughed by program area,

geographical location, or class. Within this designation, the following applies:

- a. In nonemergency furlough situations when not all employees are being furloughed, the Employer will ask employees to volunteer to be placed in leave without pay (LWOP) status.
 - 1. The Employer reserves the right not to accept a voluntary request for LWOP from an employee for mission related reasons.
 - 2. The savings from voluntary LWOP will be used to reduce the number of employees subject to furlough or the number of hours of furlough for all employees being furloughed.
 - 3. If there are insufficient volunteers to mitigate the need for furlough, employees will be selected for furlough on the basis of their leave service computation date with the employee having the least amount of service being the first furloughed.
 - 4. If there are more than enough volunteers to obviate the need for the furlough, employees will be placed in LWOP status on the basis of their leave service computation date with the employee having the most amount of service being given the first right of being furloughed.
- b. In a nonemergency furlough situation, and to the extent it is possible to do so, the Employer will permit employees to choose the days on which they will be furloughed. In the event of scheduling conflicts among equally qualified employees, the employee with the most amount of service will be granted his/her request.
- c. In a nonemergency furlough situation, and to the extent it is possible, the Employer will not schedule both the work day before and the work day after a holiday as furlough days.

21.15 SHUTDOWN PROCEDURES:

- a. Necessary shutdown functions may include but are not limited to:
 - 1. Making necessary contacts outside the Agency to communicate status of operations;
 - 2. Canceling meetings, hearings, and other previously arranged Agency business;
 - 3. Issuing notices to customers and cooperators regarding termination of

activities;

4. Performing the tasks necessary to protect classified and confidential information, including listing of all papers to be accorded confidential status and accounting for all classified documents;
 5. Inventorying and preparing Government property for disposition; and,
 6. Performing requisite administrative functions, such as processing payroll for the period until the expiration of funds, assuring that employees are accorded all due personnel rights, providing employees with requisite documents, etc.
- b. The Employer shall minimize the number of employees required for shutdown activities.
1. Only employees designated as critical and employees notified as required for shutdown activities will be required to report for duty on the first day of an emergency furlough.
 2. However, if noncritical employees or employees not required for shutdown activities are requested to report for duty, the Employer strongly urges that employees report for duty. Failure to report for duty during the employee's normal tour will result in the employee not being paid for that day if the furlough ends on or prior to 11:59 PM on that day. If the furlough ends prior to the beginning of an employee's scheduled tour of duty and the employee is either late reporting or fails to report on that day, he/she will be considered to be in Absence Without Leave status, absent a reasonable explanation for granting other leave status.
 3. Employees on prior approved leave on the first day of an emergency furlough will not be required to report for work unless otherwise directed or designated as a critical employee.
- c. Employees required to report to work on the first day or any subsequent days of shutdown will be:
1. Informed by their supervisors either orally or in writing of the shutdown activities which they are required to perform;
 2. Released from work upon completion of their assigned shutdown activities and approval by their supervisor; and,

3. Informed by their supervisor as early as possible but not later than the termination of the employee's workday, whether the shutdown activity in which they are engaged requires the employee's presence on a subsequent day(s) and if so, where and to whom to report.

PERSONNEL CONSIDERATIONS

21.16 HOURS OF DUTY

- a. During the period of an emergency furlough, full-time or part-time employees will be furloughed on the days and for the number of hours of each day in accordance with their last approved payroll time and attendance submission.
- b. During nonemergency furloughs for budgetary short falls or lack of work, all full-time employees furloughed will be furloughed for the same number of hours. Part-time employees furloughed will be furloughed in the same proportion as full-time employees. For example, a part-time employee who works 20 hours a week will be furloughed for fifty (50) percent of the number of hours that a full-time employee is furloughed.

21.17 TIME IN NON-PAY STATUS

- a. Furlough days count toward time-in-class.
- b. The effective date of a within-class increase will not be delayed because an employee is placed on furlough.

21.18 ABSENCE AND LEAVE

- a. An employee will not receive credit for annual or sick leave accruals during any pay period in which he/she accumulates 80 hours of LWOP (furlough time).
- b. When an emergency furlough is required, employees on approved annual leave on the effective date of the furlough will have their annual leave canceled and they will be permitted to remain absent from work for the duration of the furlough.
 1. Upon expiration of the furlough, employees who were on approved annual leave that did not extend beyond the end of the furlough will report for duty.
 2. Employees who have had annual leave canceled due to a furlough will be given every opportunity to reschedule that leave.

3. Employees who have had annual leave canceled or who were prevented from taking scheduled annual leave due to a furlough, and who make reasonable efforts to reschedule their leave and are denied an opportunity to take use or lose leave by the Employer, are entitled to request restoration of any excess leave under exigency of the public service leave regulations. If regulatory requirements are met, the Employer will grant requests under these circumstances.
- c. When an emergency furlough is required, employees on approved sick leave on the effective date of the furlough will have their sick leave canceled and they will remain absent from work for the duration of the furlough.
 1. Upon expiration of the furlough, employees who were on approved sick leave that did not extend beyond the end of the furlough will report to duty unless their medical status precludes them from doing so.
 2. If an employee's medical status precludes him/her from reporting to work upon the expiration of the furlough, the employee must request sick leave in accordance with applicable procedures.
- d. Employees may not use any type of paid leave on scheduled furlough days.
- e. Furlough days do not count against Family Medical Leave absences and entitlements.
- f. Employees in continuation of pay (COP) status will remain in COP status in accordance with Department of Labor regulations during a period of furlough.

21.19 HEALTH AND LIFE INSURANCE

- a. Health insurance benefits will continue for up to 365 days in non-pay status.
 1. The Government shall continue to pay the Employer share of the health insurance premium.
 2. The employee is responsible for his/her share of the health insurance premium. Payment of the employee's share of the premium during a furlough will be made in accordance with National Finance Center procedures.
- b. Life insurance shall continue for up to 365 days in non-pay status at no cost to the employee.

21.20 PAY DURING FURLOUGH

- a. Employees who are required to report for duty during an emergency furlough will be compensated in accordance with applicable Statute and regulation.
- b. Employees who are placed on emergency furlough because of a lapse of appropriations will be retroactively paid when appropriations are approved to the extent permitted by Statute and regulation. Absence without charge to leave shall be retroactively granted barring statutory prohibition, or actions that would be in violation of the Anti-Deficiency Act, 31 U.S.C., or statements of Congressional intent to the contrary.
- c. Furlough will not be used in lieu of another adverse or disciplinary action.
- d. Performance expectations shall be adjusted to take into account the effect of being away from the workplace on furlough.

MISCELLANEOUS CONSIDERATIONS

- 21.21 To the extent the Employer has information available on contact points for unemployment compensation and other benefits to which employees being placed on furlough may be entitled, it will be provided to those employees.
- 21.22 Outside employment may be accepted during furlough days as long as the work does not constitute a conflict of interest.
- 21.23 To the extent possible, AFSA/FAS Vice President or designee shall be allowed access to the designated AFSA/FAS offices and related space during a furlough, of whatever type and duration, in order to continue to fulfill the Union functions and responsibilities delineated in Chapter 10 of the Act. AFSA/FAS recognizes that the Employer does not control access to the South Building, but the Employer shall seek cooperation and approval by the Department to ensure Union access.

EXPEDITED FURLOUGH GRIEVANCE AND APPEALS

- 21.24 This section applies only to furlough grievances and appeals. Either Party may submit an implementation dispute grievance over the interpretation of this Article, or its general application, to the servicing Labor Relations Specialist or AFSA/FAS Vice President.
- 21.25 The grievance will be in writing and submitted within 5 work days of either Party's becoming aware of the issues giving rise to the grievance.

- 21.26 Within 5 work days of receipt of the grievance, representatives of the Parties will meet to attempt to mutually settle the grievance.
- 21.27 If settlement cannot be reached, the Parties will request a listing of not less than 3 nor more than 5 arbitrators from the Federal Mediation Conciliation Service.
- 21.28 Within 2 working days of receipt of the list of arbitrators, representatives of the Parties will meet and select an arbitrator by alternately striking names. The loser of a coin toss will strike first.
- 21.29 The arbitrator's authority will be limited to interpreting this Article and determining remedies for breach of this Agreement. The arbitrator is not empowered to fashion a remedy that decides the appeal of any individual employee.
- 21.30 An expedited arbitration procedure will be used. The arbitration hearing will be scheduled for the earliest date available on the calendar of the arbitrator selected. The arbitrator shall be asked to issue a bench ruling, followed by a short written confirmation of his/her award.
- 21.31 The arbitrator's fee will be paid by the losing party. In the event of a split decision by the arbitrator, the arbitrator's fees shall be paid by the Parties in a proportion determined by the arbitrator.
- 21.32 This grievance procedure does not cover individual employee appeals of furlough actions.